U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17586781

Date: SEP. 16, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an acupotomy researcher and clinician, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Texas Service Center Director concluded that the Petitioner qualified for the underlying classification and that he is well positioned to advance his proposed endeavor. While the evidence supported a finding that the proposed endeavor has substantial merit, the Director determined that the evidence did not establish that the endeavor is of national importance, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner reasserts his eligibility for a national interest waiver and argues that the Director erred in the decision. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attomey General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Petitioner qualifies as an individual of exceptional ability by meeting at least three of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii).[4] However, the record does not establish that the Petitioner qualifies for a national interest waiver under the analytical framework set forth in Dhanasar. Therefore, the petition cannot be approved.

In the initial filing, the Petitioner indicated that his proposed endeavor is to introduce acupotomy to the United States by building a Korean Medicine and Acupotomy Center. He intends to continue working as a clinician, in addition to researching, introducing, developing, and advancing the field of acupotomy. The Petitioner explained that acupotomy is a non-invasive acupuncture/microsurgery that uses a small chisel-shaped needle to treat chronic soft tissue injury. He stated that acupotomy has many benefits including those of reducing the risk, time, recovery period, cost, and physical and mental stress associated with traditional invasive surgery. According to the Petitioner, acupotomy can also be performed safely on the elderly who are otherwise vulnerable to the side effects of prescription drugs and surgical operations. In addition, the Petitioner claimed that his work as a researcher and clinician "will address the growing need for better and more effective treatments, which will significantly benefit U.S. healthcare, well-being, economy and society." Regarding his future research, the Petitioner plans to work in conjunction with the [redacted] at [redacted] University in [redacted] California to compare results of acupotomy with surgical operation cases for chronic soft tissue disease (CSID) sufferers. As part of this research, the Petitioner also plans to develop a CSID acupotomy protocol and a detailed manual.

In response to the Director's request for evidence (RFE), the Petitioner clarified that his proposed endeavor is "to develop a specialized, [redacted] Oriental Medicine clinic and nursing home within a [redacted] building located in [redacted] Texas, which would employ 26 Americans to work in [redacted] Nursing Home, 6 individuals to work in [redacted] Clinic, and 5 management and support personnel." His long-term goal is to establish clinics in numerous cities across the United States, to facilitate medical practitioners serving in these clinics, and for others to establish their own clinics based on the model he creates. Noting the aging population and rising healthcare costs in the United States, the Petitioner

[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).
[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] Although the Petitioner claimed to hold both master's and doctoral degrees, the record contains no foreign academic equivalency evaluation to establish the U.S. equivalency of the Petitioner's foreign education.

asserted that his proposed endeavor would reduce the cost of healthcare and increase the overall health and productivity of the elderly by providing a lower cost healthcare option.

The Director determined that the proposed endeavor has substantial merit, but that the record did not establish the proposed endeavor's national importance. Specifically, the Director noted that the endeavor appeared to impact only an isolated target and that the record did not establish how the Petitioner's proposed work has implications beyond his research or how it would have a broader impact on quality of life and healthcare costs.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of his work. We conclude that while his endeavor does have substantial merit, the record does not establish by a preponderance of the evidence that the Petitioner's clinical work would impact the field of healthcare more broadly, as opposed to being limited to the specific patients and workplaces he serves. In Dhanasar, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. See Dhanasar, 26 I&N Dec. at 893. We further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." Id. at 889. The business plan the Petitioner submitted in his RFE response suggests that he will focus on serving elderly Korean-Americans, which would appear to impact a narrow population. Even if the Petitioner does not intend to limit the focus of the proposed endeavor to elderly Korean-Americans, the Petitioner improperly relies upon the prospective impact he might have on his patients as sufficient to meet the first Dhanasar prong.

Although his long-term goals may have a broader reach than the limited impact his own clinical work would make, we have insufficient information concerning how the Petitioner will open clinics across numerous cities in the United States, facilitate medical practitioners serving in these clinics, or encourage others to use his model to run their own clinics. Beyond the clinic in [redacted] the Petitioner has not provided sufficient details for any clinic he will establish in other cities or how any of the additional clinics would be funded.[5] He has not offered detail on how he will facilitate medical practitioners to serve in these clinics nor has he provided evidence of the model he intends for others to follow if they open similar clinics.[6]

Notably, the Petitioner has not identified how much time he will spend on his various proposed endeavor activities, which include clinical work with patients, the operations and development of his nursing home and clinic in [redacted] and his previously identified research work. The proposed endeavor does not clearly delineate how the Petitioner will perform his clinical and business activities while also completing research in conjunction with the [redacted] at [redacted] University.

We acknowledge the numerous potential applications for acupotomy in conditions such as low back pain, bone disease, and CSID, among others, and that these ailments affect large portions of the

[5] The Petitioner indicated that his [redacted] Texas clinic will be funded based on his personal savings and assets, but he has not provided any information concerning the funding of the additional clinics across the United States.

[6] We reviewed the Petitioner's business plan, but this information does not contain a model for others on how to establish and open other clinics.

population, not just the elderly. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on "the specific endeavor that the foreign national proposes to undertake." Id. Similarly, national importance is not determined by the breadth of a problem or issue, but rather the impact the proposed endeavor will have on the problem or issue. Although addressing widespread chronic disease and rising healthcare costs is important, the Petitioner has not persuasively established how his proposed endeavor would impact these issues in a manner indicative of national importance. The Petitioner emphasized the widespread nature of the conditions that acupotomy could address and the number of people afflicted with such ailments, but he did not offer sufficient data or explanation as to how many individuals the Petitioner's proposed endeavor would treat. It appears logical to conclude that not every person who has a condition that could be treated by acupotomy will in fact be treated by the Petitioner, nor that every person the Petitioner treats will experience a successful recovery. Accordingly, offering statistics on the number of people suffering from a condition that acupotomy could alleviate is not sufficient to adequately address the impact of the proposed endeavor.

We acknowledge the Petitioner's argument that he can improve the quality of life for the elderly and reduce healthcare costs because his treatments will allow the elderly to return to being productive members of society. Although the Petitioner plans to treat [redacted] patients at a time in his nursing home, he has not provided the approximate rate of successful treatment or projections of how long nursing home residents will stay such that we can ascertain the number of individuals who might return to being productive members of society. Likewise, the record does not include information concerning how many patients he will be able to treat in his clinic or the rate of success for those individuals.

In addition, the Petitioner has not explained how his proposed endeavor would reduce healthcare costs. For instance, we have little information regarding the cost of invasive surgery treatments either to the patient or to the healthcare system nor do we have comparative data on what acupotomy costs. Therefore, we cannot ascertain whether acupotomy would offer any cost savings. To illustrate further, we have little information concerning how insurance carriers would view acupotomy and whether they would accept acupotomy treatment claims. The Petitioner has not offered specifics as to whether he would accept insurance for his treatments or whether patients would pay out of pocket. This appears important, as patients might opt for invasive surgery even with the availability of acupotomy if their out-of-pocket cost would be less. The Petitioner has not offered an analysis of how and where any cost reduction would be realized. The record does not substantiate specifically whose healthcare costs the proposed endeavor will reduce or how it would occur.

The Petitioner submitted letters of recommendation in which the authors praise the Petitioner's background, education, experience, and abilities in the field. Some letters contain unsubstantiated statements, such as that the Petitioner is single-handedly responsible for bringing acupotomy to Korea, while others contain overly general claims, such as that the Petitioner has provided solutions to various difficult problems. The authors of such statements offered little explanatory detail for their assertions and we have little corroborating evidence to support them. Although the authors described the Petitioner's past impact in the field of acupotomy, few demonstrate sufficient knowledge of the Petitioner's proposed endeavor or how it would broadly impact the United States at a level commensurate with national importance. [redacted], a professor with a Ph.D. in [redacted] stated that the Petitioner's personal qualities of passion and expertise have the "potential to further the national interest of improving U.S. healthcare and by aiding the American research community

studying such interests." While this statement suggests that the Petitioner's research has national importance potential, the Petitioner has not clearly defined how much of his time he will devote to research, given his numerous other activities.

The Petitioner argues that the Director improperly concluded that the proposed endeavor would target 150-200 patients, a figure suggestive of an isolated target rather than one of national importance. The Petitioner clarifies on appeal that this figure represented his proposed research sample size. To argue that his proposed endeavor is of national importance, the Petitioner reiterates how much of the population suffers from conditions that acupotomy can address. However, as explained above, the record does not contain specific information concerning how much of the population the Petitioner intends to treat and of those treated, how many will experience successful outcomes, nor has the Petitioner identified how much time he will devote to his various activities. The Petitioner asserts that by offering his minimally invasive procedures as an alternative, his proposed endeavor can reduce the burden carried by traditional hospitals and urgent care facilities that are overwhelmed by demand. While we acknowledge these claims, he has not persuasively established that his clinics can or would be used as a direct alternative to hospitals and urgent care facilities.[7] Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of the Petitioner's eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.[8]

III. CONCLUSION

The Petitioner has demonstrated that he qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. However, as the Beneficiary has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[7] To illustrate his arguments, the Petitioner offers the example of how the COVID-19 pandemic has burdened traditional hospitals and urgent care facilities and that by offering the population an alternative to entering such facilities, his proposed endeavor will unburden the healthcare system. While we acknowledge the example, the Petitioner has not asserted that acupotomy can be used to treat COVID-19 patients and therefore we question whether the Petitioner's clinics and techniques can or would unburden the system.

[8] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).